

WEIL, GOTSHAL & MANGES LLP

Stephen Karotkin (*pro hac vice*)
(stephen.karotkin@weil.com)
Richard W. Slack (*pro hac vice*)
(richard.slack@weil.com)
Theodore E. Tsekerides (*pro hac vice*)
(theodore.tsekerides@weil.com)
Jessica Liou (*pro hac vice*)
(jessica.liou@weil.com)
Matthew Goren (*pro hac vice*)
(matthew.goren@weil.com)
767 Fifth Avenue
New York, NY 10153-0119
Tel: 212 310 8000
Fax: 212 310 8007

KELLER BENVENUTTI KIM LLP

Tobias S. Keller (#151445)
(tkeller@kbbkllp.com)
Peter J. Benvenutti (#60566)
(pbenvenutti@kbbkllp.com)
Jane Kim (#298192)
(jkim@kbbkllp.com)
650 California Street, Suite 1900
San Francisco, CA 94108
Tel: 415 496 6723
Fax: 650 636 9251

*Attorneys for the Appellees (Debtors
and Debtors in Possession)*

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:
PG&E CORPORATION,

- and -

PACIFIC GAS AND ELECTRIC
COMPANY,

Debtors.

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric Company
☒ Affects both Debtors

** All papers shall be filed in the lead case,
No. 19-30088 (DM)*

Bankruptcy Case No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

District Case No. 18-03509

**APPELLEES' RESPONSE TO SECURITIES
PLAINTIFFS' STATEMENT OF ISSUES
AND DESIGNATION OF ADDITIONAL
ITEMS TO BE INCLUDED IN THE
RECORD ON APPEAL**

PG&E Corporation and Pacific Gas & Electric Company (the “**Debtors**” or “**Appellees**”) submit this response to the March 20, 2020 filing by the Public Employees Retirement Association of New Mexico (“**PERA**” or the “**Appellant**”) of its *Statement of Issues and Designation of Items to be Included in the Record on Appeal* [Dkt. No. 6397] (the “**Statement**”) in connection with its Appeal from the *Order (I) Denying Securities Lead Plaintiff’s Motion to Apply Bankruptcy Rule 7023 to Class Proof of Claim and (II) Extending the Bar Date for Certain Holders of Securities Claims for Rescission or Damages* [Dkt. No. 5943] (the “**7023 Order**”) and the *Memorandum Decision Regarding Motion to Apply Rule 7023* [Dkt. No. 5887] (the “**7023 Opinion**”) by which the United States Bankruptcy Court for the Northern District of California (the “**Bankruptcy Court**”) denied the *Securities Lead Plaintiffs’ Motion to Apply Bankruptcy Rule 7023 to Class Proof of Claim* (the “**7023 Motion**”). The Appellees contend that the appeal should be dismissed because, inter alia, (1) the orders appealed from are not final, and (2) PERA failed to file a motion for leave to pursue an interlocutory appeal as required by Bankruptcy Rule 8004. However, in the event that this Court permits Appellant’s appeal to proceed, the Appellees submit this response in an abundance of caution.

Response to Statement of Issues on Appeal

The Appellant’s Statement of Issues on Appeal misstates the holding below. The Bankruptcy Court was asked to exercise its discretion and apply Bankruptcy Rule 7023 to allow a proof of claim filed by Appellant on behalf of a purported class. The Bankruptcy Court then exercised its discretion for reasons set out in detail in the 7023 Opinion to deny the 7023 Motion where it expressly considered the effect of granting the motion on the administration of the estate and found that “granting the Motion may result in more chaos than certainty.” Rather than granting the relief requested by Appellant, and based largely on the likely adverse effect on the ongoing administration of the Chapter 11 Cases, the Bankruptcy Court instead decided to extend the deadline to file claims in the Chapter 11 Cases for potential claimants that are purported to be included in the class and required the Debtors to provide notice of that deadline to such parties, thus affording each potential claimant the opportunity to decide individually whether to file a proof of claim.

The issues on appeal, therefore, are as follows:

1. Whether the appeal of an interlocutory order in which the Bankruptcy Court exercised its discretion to deny a motion under Bankruptcy Rule 7023 to treat a proof of claim as a class proof of claim is a proper appeal from a final order.

2. Whether the Bankruptcy Court abused its discretion in denying a motion under Bankruptcy Rule 7023 to treat a proof of claim as a class proof of claim where it found, among other things, that granting the motion would create “chaos” for the administration of the Chapter 11 Cases.

Designation of Record on Appeal

Pursuant to Bankruptcy Rule 8009, Appellees hereby designate the following additional items to be included in the record on appeal or as corrections to errors in the Appellant’s Statement, which include all exhibits and addenda attached thereto and filed therewith and all documents incorporated by reference therein:

Item No.	Description	Date	ECF No.
1.	<i>PG&E Corporation, Pacific Gas and Electric Company v. Public Employees Retirement Association of New Mexico et al.</i> Adversary case 19-03006. 72 (Injunctive relief - other) Complaint	2/15/2019	470
2.	Notice of Appearance, Request for Service of Papers, and Reservation of Rights	3/29/2019	1126
3.	Reservation of Rights of the Public Employees Retirement Association of New Mexico with Respect to Debtors’ Motion to Pay the Fees and Expenses of Simpson Thatcher & Bartlett as Counsel to the Independent Directors	4/17/2019	1479
4.	Motion to Set Last Day to File Proofs of Claim Filed by Debtor PG&E Corporation	5/01/2019	1784
5.	Objection (RE: related document(s)1784 Motion to Set Last Day to File Proofs of Claim)	5/16/2019	2043
6.	Joinder and Objection to Motion of Debtors Pursuant to 11 U.S.C. §§ 502(b)(9) and 105(a), Fed. R. Bankr. P. 2002, 3003(c)(3), 5005, and 9007, and L.B.R. 3003-1 for Order (I) Establishing Deadline for Filing Proofs of Claim, (II) Establishing the Form and Manner of Notice Thereof, and (III)	5/28/2019	2238

Item No.	Description	Date	ECF No.
	Approving Procedures for Providing Notice of Bar Date and Other Information to All Creditors and Potential Creditors		
7.	Objection Of Public Entities Impacted By The Wildfires To Motion Of Debtors Pursuant To 11 U.S.C. §§ 502(B)(9) And 105(A), Fed. R. Bankr. P. 2002, 3003(C)(3), 5005, And 9007, And L.B.R. 3003-1 For Order (I) Establishing Deadline For Filing Proofs Of Claim, (II) Establishing The Form And Manner Of Notice Thereof, And (III) Approving Procedures For Providing Notice Of Bar Date And Other Information To All Creditors And Potential Creditors	5/28/2019	2239
8.	Objection To Motion Of Debtors Pursuant To 11 U.S.C. §§ 502(B)(9) And 105(A), Fed. R. Bankr. P. 2002, 3003(C)(3), 5005, And 9007, And L.B.R. 3003-1 For Order (I) Establishing Deadline For Filing Proofs Of Claim, (II) Establishing The Form And Manner Of Notice Thereof, And (III) Approving Procedures For Providing Notice Of Bar Date And Other Information To All Creditors And Potential Creditors	5/28/2019	2240
9.	Objection to Debtors' Bar Date Motion	5/28/2019	2242
10.	Brief/Memorandum in Opposition to (Objections by the Singleton Law Firm Fire Victim Claimants to (1) The Proof of Claim Forms Proposed by PG&E and the Tort Claimants Committee and (2) the Wildfire Claim Cutoff Date Proposed by PG&E)	5/28/2019	2248
11.	Joinder in (A) Partial Objection of Ad Hoc Group of Subrogation Claim Holders to Motion of Debtors Pursuant to 11 U.S.C. §§ 502(b)(9) and 105(a), Fed. R. Bankr. P. 2002, 3003(c)(3), 5005, and 9007, and L.B.R. 3003-1 for Order (I) Establishing Deadline for Filing Proofs of Claim, (II) Establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date and Other Information to All Creditors and Potential Creditors; and (B) Motion of the Ad Hoc Group of Subrogation Claim Holders Pursuant to 11 U.S.C. §§ 105(a), 107(b) and 501 and Fed. R. Bankr. P. 3001(a) and 9018 for Entry of an Order Approving Proposed Model Omnibus Insurance Subrogation Proof of Claim Form for Subrogation Claims and Related Procedures	5/28/2019	2256

Item No.	Description	Date	ECF No.
12.	Objection of the Official Committee of Tort Claimants to Motion of the Debtors for Order (I) Establishing Deadline for Filing Proofs of Claim, (II) Establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date and Other Information to All Creditors and Potential Creditors (Dkt. No. 1784)	5/31/2019	2306
13.	Objection (Limited) (RE: related document(s)1784 Motion to Set Last Day to File Proofs of Claim)	5/31/2019	2307
14.	Statement of the Official Committee of Unsecured Creditors Regarding Debtors' Bar Date Motion and the Competing Proof of Claim Forms Proposed by the Official Committee of Tort Claimants and the Ad Hoc Group of Subrogation Claim Holders	5/31/2019	2308
15.	Objection of the United States Trustee to Debtors' Motion Pursuant to 11 U.S.C. §§ 502(b)(9) and 105(a), Fed. R. Bankr. P. 2002, 3003(c)(3), 5005 and 9007, and B.L.R. 3003-1 for Order (I) Establishing Deadline for Filing Proofs of Claim, (II) Establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date and Other Information to All Creditors and Potential Creditors	5/31/2019	2316
16.	Objection Sonoma Clean Power Authority's Limited Objection to Debtor's Bar Date Motion (Dkt. 1784)	5/31/2019	2321
17.	Joinder of Northern California Power Agency to Sonoma Clean Power Authority's Limited Objection to Debtors' Bar Date Motion	5/31/2019	2324
18.	Joinder (RE: related document(s)2321 Objection)	5/31/2019	2326
19.	Joinder Of The County Of Placer To The Sonoma Clean Power Authority's Limited Objection To Debtors Bar Date Motion	6/03/2019	2346
20.	Joinder of Cazadero Community Services District to the Sonoma Clean Power Authority's Limited Objection to Debtor's Bar Date Motion	6/07/2019	2453
21.	Transcript of June 26, 2019 Hearing	6/27/2019	2781

Item No.	Description	Date	ECF No.
22.	Order Pursuant to 11 U.S.C. Section 502(b)(9) and 105(a), Fed. R. Bankr. P. 2002, 3003(C)(3), 5005, and 9007, And L.B.R. 3003-1(I) Establishing Deadline for Filing Proofs of Claim, (II) Establishing the Form and Manner of Notice Thereof, And (III) Approving Procedures for Providing Notice of Bar Date and Other Information to All Creditors and Potential Creditors (Related Doc # 1784) Proofs of Claims due by 10/21/2019. Government Proof of Claim due by 10/21/2019	7/01/2019	2806
23.	Certificate of Service of Herb Baer Regarding Order (I) Establishing Deadline for Filing Proofs of Claim, (II) Establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date and Other Information to All Creditors and Potential Creditors, Standard Bar Date Notice and Standard Proof of Claim Form, Fire Claim Bar Date Notice, Fire Claimant Proof of Claim Form, Wildfire Subrogation Claimant Proof of Claim Form, and Customer Bar Date Notice	7/23/2019	3159
24.	Supplemental Certificate of Service of Herb Baer Regarding Order (I) Establishing Deadline for Filing Proofs of Claim, (II) Establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date and Other Information to All Creditors and Potential Creditors and Standard Bar Date Notice	7/30/2019	3262
25.	Certificate of Service (Supplemental) of Alain Francoeur Regarding Order (I) Establishing Deadline for Filing Proofs of Claim, (II) Establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date and Other Information to All Creditors and Potential Creditors	8/08/2019	3474
26.	Debtors Joint Chapter 11 Plan of Reorganization Filed by Debtor PG&E Corporation	9/09/2019	3841
27.	Debtors' First Amended Joint Chapter 11 Plan of Reorganization Filed by Debtor PG&E Corporation	9/23/2019	3966
28.	Securities Lead Plaintiff's Limited Objection to Fourth Monthly Fee Statement of Simpson Thacher & Bartlett LLP for Allowance and Payment of Compensation and Reimbursement of Expenses for the Period of July 1, 2019 Through July 31, 2019	10/21/2019	4349

Item No.	Description	Date	ECF No.
29.	Motion to Allow Claims - to Extend Application of Federal Rule of Civil Procedure 23 to Class Proofs of Claim Filed by Creditor David Alonzo	10/21/2019	4370
30.	Debtors' Joint Chapter 11 Plan of Reorganization Dated November 4, 2019 Filed by Debtor PG&E Corporation	11/04/2019	4563
31.	Order Extending Bar Date for Fire Claimants and Appointing Claims Representative	11/11/2019	4672
32.	Securities Lead Plaintiff's Limited Objection to Fifth Monthly Fee Statement of Simpson Thacher & Bartlett LLP for Allowance and Payment of Compensation and Reimbursement of Expenses for the Period of August 1, 2019 Through August 31, 2019	11/20/2019	4822
33.	Order Denying Class Representative's Motion To Extend Application of Federal Rule of Civil Procedure 23 to Class Proofs of Claim	12/02/2019	4925
34.	Securities Lead Plaintiff's Motion to Apply Bankruptcy Rule 7023 to Class Proof of Claim	12/09/2019	5042
35.	Notice of Hearing on Securities Lead Plaintiff's Motion to Apply Bankruptcy Rule 7023 to Class Proof of Claim	12/09/2019	5043
36.	Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated December 12, 2019 Filed by Debtor PG&E Corporation	12/12/2019	5101
37.	Stipulation Regarding Scheduling with Respect to Securities Lead Plaintiffs Motion to Apply Bankruptcy Rule 7023 to Class Proof of Claim	12/24/2019	5198
38.	Memorandum in support of Debtors' Response to the Court's Tentative Ruling Regarding Motion to Apply Rule 7023 and Order Setting Deadline	2/14/2020	5790

Item No.	Description	Date	ECF No.
39.	DOCKET TEXT ORDER (no separate order issued:) The court will hold hearing on Thursday, February 20, 2020, at 1:30 PM re the application of FRBP 7023 vs extension of a claims bar date. See Dkt. Nos. 5604, 5786 & 5787. Counsel are welcome to appear by phone through CourtCall. Nothing more needs to be filed. Counsel for Debtors should be prepared to explain (1) why the most preferable outcome would not be for the claims, whether based on equity or debt, to pass through unimpaired, subject to all defenses, and dealt with after confirmation; (2) how Debtors will provide adequate disclosure to impaired claims filed by any extended deadline, if the deadline is after approval of a disclosure statement; (3) whether Debtors contemplate estimating the claims of such parties under Section 502(c) and of so, when; (4) how to avoid confusion by claimants between assertion of claims directly AGAINST debtors (to be included) and claims asserted DERIVATIVELY against third parties (to be excluded)? Lead Plaintiffs should be prepared to comment on the Debtors suggested timetable and the proposed Notice and proposed Securities Proof of Claim (Dkt. No. 5787-1), remembering that what is required of a class action settlement notice is different from a bankruptcy proof of claim	2/17/2020	N/A
40.	Hearing Set Per the Court's 2/17/20 Docket Text Order (related document(s) 5042 Motion /Securities Lead Plaintiff's Motion To Apply Bankruptcy Rule 7023 To Class Proof Of Claim, 5604 Order on Motion for Miscellaneous Relief). Hearing scheduled for 2/20/2020 at 01:30 PM at San Francisco Courtroom 17 - Montali	2/18/2020	N/A
41.	Amended Chapter 11 Plan Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated March 16, 2020 Filed by Debtor PG&E Corporation	3/16/2020	6320
42.	Order (I) Approving Proposed Disclosure Statement for Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization; (II) Approving Form and Manner of Notice of Hearing on Proposed Disclosure Statement; (III) Establishing and Approving Plan Solicitation and Voting Procedures; (IV) Approving Forms of Ballots, Solicitation Packages, and Related Notices; and (V) Granting Related Relief	3/17/2020	6340

Item No.	Description	Date	ECF No.
43.	Amended Disclosure Statement Disclosure Statement for Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Filed by Debtor PG&E Corporation.	3/17/2020	6353
44.	Certificate of Service of Christina Pullo Regarding Extended Bar Date Notice and Rescission or Damage Claim Filed by Other Prof. Prime Clerk LLC	4/02/2020	6611

Dated: April 3, 2020

WEIL, GOTSHAL & MANGES LLP

KELLER BENVENUTTI KIM LLP

By: /s/ Richard W. Slack
Richard W. Slack
Peter J. Benvenutti

*Attorneys for the Appellees (Debtors
and Debtors in Possession)*